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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL GRUHN, ULRICH KUNZE, and NORBERT SCHILLER

Appeal 2009-007154
Application 10/501,725
Technology Center 2800

DECISION ON APPEAL[1]

Before KARL D. EASTHOM, THOMAS S. HAHN, and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the rejection of claims 6-13, 15, and 16. Claims 1-5, 14, and 17 have been cancelled. (Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

The Disclosed Invention[2]

The disclosed invention includes a diagnostic system configured to diagnose a plurality of power stations 5 including a server at each power station, a memory unit 20 that includes an acquisition unit 17 and a server unit 21, a diagnostic unit 25 including a server, and a client computer 15 having a communications link 10 to the Internet. (Spec. ¶¶ [0058-0063]; Fig. 2.) The acquisition unit 17 in the memory unit 20 collects data about the power stations 5 from the server at the power station 5 through the Internet. (Spec. ¶¶ [0059-0060].) The diagnostic unit 25 receives measurement data from the Internet and classifies the data. (Spec. ¶ [0062].) A client computer 15 can retrieve data stored in the memory unit 20 via the communications link 10 to the Internet. (Spec. ¶ [0063].)

Exemplary claim 6 follows:

> 6. A diagnostics system configured to access and diagnose a plurality of remote stationary power stations, comprising:

[2] The ensuing description constitutes Findings of Fact.

an acquisition unit remote from at least one of the stationary power stations for collecting measurement data detected by sensors in the power stations;

a diagnostics unit connected to the acquisition unit for classification of operating states of the power stations that are represented by the measurement data;

a memory unit connected to the acquisition unit and the diagnostics unit and the measurement data is centrally stored in the memory unit; and

a server unit connected to the memory unit that generates machine–readable data based on an HTML language.

The Examiner relies on the following prior art reference:

Reid	US 6,298,308	Oct. 2, 2001

Claims 6-13, 15, and 16 stand rejected under 35 U.S.C. 102(e) as anticipated by Reid.

ISSUES

Appellants' responses to the Examiner's positions present the following issues:

1. Did the Examiner err in finding that Reid anticipates claim 6?

2. Did the Examiner err in finding that Reid anticipates claim 7?

3. Did the Examiner err in finding that Reid discloses "a server at each power station" and "a memory unit comprising an acquisition unit and a server unit receiving the collected measurement data via the internet from each power station server" as recited by claim 12?

FINDINGS OF FACT (FF)

Reid

1. Reid discloses a system to collect and analyze data from one or more machines 14. (Col. 2, ll. 37-41; Fig.1.)

2. The system includes a local expert 16 that "receives vibration data from each of the machines 14 or a subset thereof." (Col. 5, ll. 1-3; Fig.1.) "[T]he local expert 16 may be mounted … away from the vibration, dirt, debris, etc. which may be found near the machines 14." (Col. 5, ll. 35-38.)

3. The system also includes "an expert analyzer module 80 designed to analyze the vibration data collected from each of the machines 14 connected thereto in order to diagnose the condition of the machines 14." (Col. 9, ll. 12-15.)

4. "The local expert 16 includes a database which stores information on the particular machines 14 from which it receives vibration data as well as a library of data on machines of the same type." (Col. 5, ll. 6-9.)

5. The system further includes "[o]ne or more control panel OPC interfaces 28 . . . for allowing personnel located remote from the local experts 16 to . . . view data collected and/or analyzed by the local experts 16." (Col. 6, ll. 15-20.)

6. The system further includes devices with "web based clients 22 for requesting information from the local experts 16 in a web-based format (e.g., html files)." (Col. 5, ll. 60-61; Fig.1.)

PRINCIPLES OF LAW

The Examiner bears an initial burden of factually supporting an articulated rejection. *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). "It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986). On appeal, Appellants may rebut the Examiner's findings and reasoning with opposing evidence or argument. Failure to do so may constitute a waiver of potential arguments. *See Ex*

parte Frye, 94 USPQ2d 1072, 1075 (precedential) (BPAI 2010) ("If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection."); *Hyatt v. Dudas*, 551 F.3d 1307, 1313-14 (Fed. Cir. 2008) (The Board may treat arguments appellant failed to make for a given ground of rejection as waived); 37 C.F.R. § 41.37(c)(1)(vii).

ANALYSIS

Issue 1- Claims 6 and 9-11

Appellants argue that Reid does not anticipate claim 6 because the local expert 16 of Reid cannot qualify as the "acquisition unit" of claim 6 due to it not being "remote from at least one of the stationary power stations" as required by claim 6. (Br. 4.) As found by the Examiner, however, the local expert 16 is remote from at least one plant machine 14 because it is not integral to the machine and the specification fails to define the term. (Ans. 5-6.) Reid supports this interpretation because the local expert is removed sufficiently "from the vibration, dirt, debris, etc. which may be found near the machines 14." (FF 2.) *See Brookhill-Wilk 1, LLC. v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1304 (Fed. Cir. 2003)(holding that "remote" includes the same room pursuant to the disclosure, claims, and file history).

Appellants also argue that Reid does not disclose a central memory unit. (Br. 5.) As found by the Examiner, however, Reid does disclose a database which stores information about the machines 14. (Ans. 3; *accord* FF 4.)

Therefore, we will sustain the Examiner's rejection of claim 6. We will also sustain the Examiner's rejection of claims 9-11 which depend from claim 6 because Appellants did not present separate patentability arguments for these dependent claims. (*See* Br. 3-5.)

Issue 2 – Claims 7 and 8

Appellants argue that claim 7 is not anticipated by Reid because claim 7 "recites an Internet communication between a client computer 15 and the server unit 21" which "means that the client computer 15 is remote from the central memory unit 20 where measurement data MD is collected by a data acquisition unit 17 and is centrally stored." (Br. 5.) As found by the Examiner, Reid also discloses an Internet connection between a client computer (*i.e.*, the control panel OPC interface) and a server unit of the diagnostics system, as required by claim 7. (Ans. 3, 6; *accord* FF 5.) In addition, Reid discloses an internet connection between other client computers (*i.e.*, the web-based clients 22) and a server unit of the diagnostics system. (Ans. 3; *accord* FF 6.) In addition, as explained above in the analysis of claim 6, Reid discloses a memory unit that stores measurement data about the machines 14. The memory unit is in the local expert 16, which is remote from the client computers. (FF 4-6.)

Appellants further argue that the rejection of claim 7 is not proper because "Reid does not teach a remote data acquisition unit 17 or a central memory unit 20 for a plurality of power stations." (Br. 5.) These limitations are recited by independent claim 6. As explained above in the analysis of claim 6, Reid discloses these limitations.

Therefore, we will sustain the Examiner's rejection of claim 7. We will also sustain the Examiner's rejection of claim 8 which depends from

claim 7 because Appellants did not present separate patentability arguments for claim 8. (*See* Br. 5.)

Issue 3 – Claims 12, 13, 15, and 16

Appellants argue that Reid does not anticipate claim 12 because Reid does not disclose "a memory unit comprising an acquisition unit and a server unit receiving the collected measurement data via the Internet from each power station server." (Br. 4.) The Examiner argues that Reid discloses a local expert 16 which includes a memory unit, an acquisition unit, and a server unit. (Ans. 3, 4-6.) But the Examiner's argument fails to demonstrate that the local expert 16 receives "collected measurement data via the Internet from each power station server," as recited in claim 12. Indeed, the Examiner's argument fails to identify the power station server in Reid.

Therefore, we will not sustain Examiner's rejection of independent claim 12 and claims 13, 15, and 16 dependent therefrom.

CONCLUSION

The Examiner did not err in finding that Reid anticipates claims 6 and 7. Appellants did not present separate arguments for claims 8-11 and therefore, we will also sustain the Examiner's rejections of those claims.

The Examiner did err in finding that Reid discloses "a server at each power station" and "a memory unit comprising an acquisition unit and a server unit receiving the collected measurement data via the internet from each power station server" as recited in claim 12.

DECISION

We affirm the Examiner's decision rejecting claims 6-11. We reverse the Examiner's decision rejecting claims 12, 13, 15, and 16.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136. *See* 37 C.F.R. § 1.136(a)(1)(v) (2010).

AFFIRMED-IN-PART

KMF

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